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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,777	06/12/2008	Jung-Suk Mueller	30059/42169	7847
4743 7590 06/29/2011 MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 WILLIS TOWER CHICAGO, IL 60606-6357			EXAMINER PATTERSON, MARIE D	
			ART UNIT 3765	PAPER NUMBER
			NOTIFICATION DATE 06/29/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mgbdocket@marshallip.com

Office Action Summary

Application No.

10/585,777

Applicant(s)

MUELLER, JUNG-SUK

Examiner

MARIE PATTERSON

Art Unit

3765

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-58/US)
Paper No(s)/Mail Date 8/11/08, 2/7/07, & 7/11/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 the phrase "a midsole bottom" is vague and indefinite because no midsole has been positively recited except in the last line which states that all of the previous elements form a midsole. This is confusing, vague, and indefinite.

Claim 2 is confusing in that it is not clear what elements applicant is referring to as "the midsole".

In claims 6-11 the phrases "inwardly" and "outwardly" are vague, confusing, and indefinite. It is suggested that applicant use the well known and conventional terms for the lateral and medial sides of the foot and footwear. The lateral side of the foot/footwear is the side which the little toe, fifth metatarsal is located. The medial side is the one in which the big toe, first metatarsal is located.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, and 4-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller (WO 01/15560) in view of Coplans (3550597).

Mueller shows a shoe comprising a midsole (11), an undersole (12), hard inserts (15), hard resistant sole bottom (13) substantially as claimed except for a twist plate. Coplans teaches providing a twist plate (15) above an undersole (29) or in an undersole (see figure 14). It would have been obvious to provide a twist plate as taught by Coplans in the footwear of Mueller to correct the natural action of the foot walking.

In reference to claims 6-11, the undersole would inherently result in the thickness variations claimed due to the incorporation of the twist plate in the above combination.

In reference to claims 6, 8, and 9, Coplans teaches a device to correct one direction of foot movement and it is well known and conventional to correct the opposite direction of foot movement by oppositely directed twist/sloping of the corrective device.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2, and 4-11 above, and further in view of Barry (5052130).

Mueller as modified above shows a shoe substantially as claimed except for the exact location of the twist plate. Barry teaches providing gait modification plates (20) adjacent to a resistant sole bottom (16). It would have been obvious to locate the twist/gait modification plate adjacent the sole bottom as taught by Barry in the shoe of Mueller as modified above to allow the plate to be easily attached to a midsole/undersole after such is preformed but prior to attachment of a tread to allow easy attachment of the plate for gait correction.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571)273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3765 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

/Marie Patterson/
Primary Examiner
Art Unit 3765